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April 26, 2019

By Electronic Filing

Honorable Anne Y. Shields
Magistrate Judge
U.S. District Court, EDNY
100 Federal Plaza
P.O. Box 830
Central Islip, NY 11722

Re: **The Teddy Bearys Ltd. v. Dover Publications, Inc., et al.**
No. 18-cv-3436

Dear Judge Shields:

I submit this letter as counsel for Defendants in connection with the May 1 conference on Baruch Gottesman's motion to withdraw as Plaintiff's counsel and for a 60-day stay of the case until Plaintiff finds new counsel. Your Honor made Defendants' appearance optional, and I do not plan to attend.

I submit this letter in lieu of my appearance in person, in part to emphasize what I wrote in my April 11 letter, from which I quote - -

"Under the current Scheduling Order, as amended, all fact discovery must be completed by June 28, 2019. The stay requested, if granted, would extend into mid-June and leave Defendants virtually no time to complete discovery. As described in my March 5, 2019 letter to the Court, Plaintiff has not responded at all to any of Defendants' discovery, including Defendants' First Requests for Interrogatories and First Requests for Document Production, both served on November 26, 2018. Plaintiff has not requested or received any extension of time to answer or object (hence the time for objections has expired). Plaintiff has also failed to comply with the October 5, 2018 deadline for completion of Rule 26(a) Initial Disclosures. Defendants have requested responses on many occasions, but have received none. Defendants have complied with the Initial Disclosures, and Plaintiff served no requests for document production or interrogatories by the November 28, 2018 deadline, now long expired.

"Plaintiff's principal, Trisha Scott, first advised this Court and me on January 20, 2019, nearly three months ago, that she intended "to find alternative Counsel," but she has

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not in that time obtained substitute counsel. She has already had ample time to find new counsel.

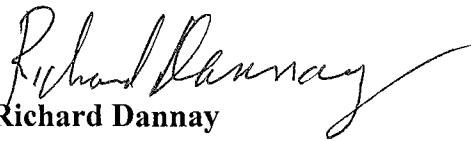
“Defendants require responses to their paper discovery to support their defenses, and thereafter for depositions. The requested stay would thus be harmful to Defendants under the current Scheduling Order and deprive them of adequate time to conduct and complete discovery. This case was filed on June 13, 2018, and Plaintiff has failed to prosecute it or respond to Defendants’ discovery.”

These deficiencies are all the more troubling because this case is premised on two highly implausible assertions. One, that the three-year copyright statute of limitations has not expired because Plaintiff first discovered the alleged infringement only in late 2015 and timely sued in 2018. But the Dover book was first published in 1985 -- in the U.S. and simultaneously by Constable in the UK, Ms. Scott’s residence -- and remained continuously in print through 2009, going out of print in 2010. It is not plausible that Ms. Scott lacked the opportunity to discover the Dover book in 30 years and during the entire 25 years it was in print. She was a Teddy Bears enthusiast and the Dover book was about Teddy Bears.

Two, Plaintiff’s drawing was first published in September 2015, according to her U.S. Copyright Office registration. The Dover book was first published in 1985 and went out of print in 2010 -- all long before Plaintiff’s drawing was even published. Plaintiff has not explained, and cannot plausibly explain, how Defendants had access to and copied a work that remained unpublished the entire 25 years their book was in print and for five years thereafter. These matters and others are the subject of the Defendants’ discovery requests that have been ignored for over six months.

Thank you.

Respectfully submitted,


Richard Dannay

cc: Baruch Gottesman, Esq.
Attorney for Plaintiff
(By electronic filing)